

## Introduction

### DEMOCRATIZATION PROCESS, THE RIGHT TO PARTICIPATION AND STATE CONSCIENCE

If we understand Human Development as the process by which the human being enhances his/her opportunities to enjoy a healthy and prolonged life, acquire knowledge and has access to the necessary resources for achieving a decent level of life, we will find that this definition has clear overlaps with the concept of human dignity, foundation of the doctrine and international instruments on human rights, and the one of appropriate level of life, recognized in article 25.1 of the Universal Declaration of Human Rights.

But perhaps there is no other place in the International Human Rights Law literature where the relationship between human rights and development is as clear as it is in the 1986 UN Declaration on the Right to Development. In this instrument it is explicitly recognized that “[t]he human person is the central subject of development” and that development itself is an inalienable human right (arts. 2.1 and 1.1).

From its preamble definition of development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”, it is also clear that the Declaration aims that participation will always be present as a basic element of the development processes.

Consequently, the right to participation comes about within the context of the right to development, which makes the relationship between rights and development even more evident. Thus, promoting human rights is both a goal and a critical means of development. This proves true to Paul and Dias’ statement that in development work “both the welfare and the empowerment of people are central purposes” (1996, i, 42). That is, processes become as important as goals. On the other side, if citizens become aware of their rights and opportunities for participation and do mobilize to make them effective in their everyday existences, that same mobilization brings about development.

In the Honduran case, as it may well be the experience of other developing and transitional countries, because of the historically exclusion-oriented socioeconomic model, where equity and social integration are imperatives, the struggle for human rights has also been in some way a struggle to broaden the umbrella of citizenship. And here, citizenship should be understood not only as electoral politics but also as the participation of the common person in decision

making of his/her everyday personal, community and national issues through the exercise of his/her human rights. In fact, what really defines citizenship is direct participation in decision making of issues affecting one's everyday life, not age or registration in a voter's list. If seen from this perspective, children can become citizens, for instance. This paper assumes that full and authentic citizenship can only be enjoyed and experienced under a democratic regime.

After centuries of predominantly authoritarian tradition, the Central American region lives today a democratization process where governments are now elected by people, the armed forces are more and more subordinated to civil authority, gross violations to human rights are no longer, as in the past, a state policy (but rather the State has created institutions to promote and defend human rights) and control and some forms of accountability of the rulers by society, though currently weak, are being experimented (Proyecto Estado de la Región, 42 – 44; 195 – 197).

At the end of the XX century, Honduras is a society in transition. Especially during the current decade, the country is experiencing a very special situation by which not one but three transitions are taking place simultaneously. A political transition, that can be characterized as a democratic transition, which shows, for the first time in the country's history, six civil governments in a row (from 1980 to the present) elected in free and unrestricted polls. An economic transition featuring the opening of markets and the arising of new exports (it can be said safely that Honduras is no longer a "banana republic", about that matter). Lastly, a social transition related to changes in life styles and values and a significantly increasing process of urbanization (PNUD 1998, 1).

In the Honduran case, two phases of the political transition can be clearly identified: the first one restrained to electoral democracy due to security constraints imposed by the Central American political and military crisis of the 1980's. The 1998 Human Development Report for Honduras (HDR-H), the first one specifically devoted to the country, reports that some analysts even viewed this period as a preventive attempt, on the part of the Honduran political elites to avoid the spread of insurgency (PNUD 1998, 44). The second one, deeper and richer in quality, has made way for the initial build-up of a democratic culture that nurtures pluralism, debate and tolerance, while the electoral mechanisms continue to improve. The beginning of the latter was possible thanks to the end of the Cold War and the solution of the Central American crisis (PNUD 1998, 44 – 47).

It is in this phase, starting in the 1990's with the Administrations of Rafael Callejas (1990 – 1994) and Carlos R. Reina (1994 – 1998), that spaces have been yielded for organizations of civil society to exercise their rights to participation and development. This is because authentic participation requires certain conditions like freedom of speech and expression, freedom of the press, freedom of

association, movement and assembly and freedom of information. In short, it needs at least a minimal functioning of the rule of law. So, differently from previous and shorter democratic periods in the country, this one has seen a "blossoming" of social organizations, which have assumed an important role of intermediation and generation of public opinion.

Apparently, it was peace, beginning with Esquipulas II Accords in 1987, which favored economic recovery and opening of the political systems, the most powerful variable responsible for the renewed impulse of the democratization process (Proyecto Estado de la Nación 1999, 42 – 44). Thus, it is not any kind of democracy that has permitted the experiences further described to happen, but democracy accompanied with peace.

All of the cases we are about to study share a common ingredient: they were led by new actors, had been state-related or from civil society. These new actors were to a great extent unknown to the political system, which had been used to traditional ways of representation, rather massive in nature, participation and mobilization in the form of political parties, labor unions, peasant organizations, student movements, slum neighborhood committees and similar organizations.

The fracture in the traditional ways of participating, which made way to a sort of "informality of participation", was probably aided by the fact that parties and politicians were no longer perceived as the only mediators or channels between people's needs and demands and the State, in spite of Honduran democracy's young age. The 1998 HDR-H mentions an "autism" of the political class (p.9), which would be worth of further research.

Interestingly enough, as Clarence Dias makes the point (UNDP / UNHCHR / Norway, 208-209) the core human rights instruments, as the Universal Declaration of Human Rights, in Article 21 "[e]very one has the right to take part in the government of his country, directly or through freely chosen representatives" and the International Covenant on Civil and Political Rights, in its Article 25, using almost the same wording of the former, seem to be inclined to traditional ways of political participation. It is only in more recent and specialized instruments, like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that other forms of participation are found. For instance, the right to participate in the formulation of government policy and the implementation thereof (Article 7.b.), the right to participate in NGOs and associations concerned with the public and political life of the country (Article 7.c.) and the right to participate in the elaboration and implementation of development planning at all levels (Article 14.2.a.).

Some features that characterize the new breed of civic participation are the fact that it is not partisan in nature; it is aimed to concrete topics, almost always issue or sector oriented and its advocates are not interested (at least in the short run) in seeking political power or public office *per se*. Its impact covers a wide range of positive results, like a renewed feeling of legitimacy and concern towards public affairs by people who previously have had little or no participation on the political scenario. It has also promoted accountability from public officers and in sum, elevates the quality of democracy, trespassing mere electoral politics.

Probably most important, this new breed of participation underscores the fact that in a democracy it is not only important to strengthen political institutions, but political practices as well, because there is a close intertwine between political culture and the consolidation and permanence of institutions. Moreover, it seems to be a virtuous cycle among democratic political culture, awareness of rights and participation to claim and exercise them in a process towards citizenship building. Unfortunately, as paradoxical as it may sound, sometimes the speed of political changes, especially of those highly influenced by international context, can be faster than that of the cultural ones (Salomón 1998, 3 - 4). As much as Vigilante has made the case for operationalizing the right to participation in transitional countries (UNDP/UNHCHR/Norway, 188-191), the challenge in Honduras has not been to enhance participation, but rather to make it happen.

Overall, this new breed of participation demonstrates that not only the State, but also all actors, have an obligation to promote human rights and human development. This brings about a promotional and more proactive approach to the struggle for human rights, rather than the traditional reactive one, based on denunciation of State transgressions and omissions. Even the State, as it will be seen in the case of the Honduran Human Rights Ombudsman, has to change its standpoint and use more and more self-examination and honesty. It seems Hondurans have found an equation by which, as a local sociologist has put it, the spiral of social mobilization, backed by a favorable national and international context, draw the politicians into giving circumstantial but clear and opportune answers (Salomón 1997b, 130). Such appears to have been the style in the Honduran democratization process, not a clear continual long-run program designed by the political leadership, but an intermittent pulling by civil society to get advancements.

## **I. THE HUMAN RIGHTS ORGANIZATIONS: PROMOTING DEMILITARIZATION, POLICE REFORM AND ACCOUNTABILITY**

*The great countries of the world are not those that have never experienced periods of darkness and barbarity, but rather those that have been able to examine such times without fear and overcome them.*  
(Leo Valladares, Ombudsman, in foreword to *The Facts Speak for Themselves*)

One of the most promising, but also most challenging, features of the Honduran political transition is the building of the rule of law. This point proves to be so critical because, as Paul and Dias have stated, without the rule of law it would not be possible to secure the exercise of all other rights, nor the implementation of participatory development strategies (1996, 23). In the Honduran case, the building of the rule of law necessarily has passed by the demilitarization of institutional life and the establishment of an accountability and transparency culture in public affairs. It is in those fields where human rights organizations, both state-related and non-governmental, have made their greatest contribution to society.

The Honduran Armed Forces of today are no longer an autonomous actor of the political system. Constitutional and legal reforms have been done for them to be under the authority and control of the Executive branch. Under these new laws, the current President has appointed a civilian Minister of Defense. The Head of the Joint Chiefs of Staff reports to the Minister within a hierarchical chain of command and it no longer exists as the position of Chief of the Armed Forces, which was set up as a parallel figure to civilian governments (CONADEH 1998, 41-48). Nevertheless, the Minister is still one of the very few civil officials in the Defense sector.

Regarding their relations with the Legislative, during the previous Congress, 1994 – 1997, laws were passed to abolish compulsory military service during peace times and to turn the Police body over to civilian control. In fact, the Police reform process had initiated with the issuing of the Public Ministry or Attorney General's Office bill in 1993 that made way for the Investigation Police to be transferred to this recently created law enforcement agency in mid 1994. State auditing agencies, which depend on Congress, have started intervention procedures in military units (Salomón 1997b, 76-157). It should be said, notwithstanding, that in spite of all these improvements, some powers of Congress over the military remain largely unused. That is the case of the authority to determine the total number of

men and women in service and the oversight of intelligence activities through the establishment and effective functioning of a Legislative Commission on the matter.

As for their situation before the justice system, the military involved in common penal law crimes are now consistently brought to civilian criminal courts. This is mainly due to the consequences of a highly publicized case in which a young teacher's training school student was sexually abused and killed by military officers in 1991 (mostly known as the Riccy Mabel case). This precedent set by the Judiciary was later reinforced by a constitutional interpretation, issued by Congress in March 1993, that clearly defined the boundaries of military courts jurisdiction (Jiménez Puerto, 2-3).

Simultaneously, there have been changes in the public security apparatus also. After 30 years under the military, the bureau of investigation was transferred to civil control since mid 1994 as a specialized support unit of the Attorney General's Office. To be fair, it was not a mere transfer but the development of a totally new organization, whose members were selected among many applicants, through professional and non-partisan criteria. Special attention was given in this process to the applicant's previous links with the National Directorate of Investigation (DNI) -- the former, military controlled body -- and any military unit, which with the exception of very specialized positions, was seen rather as a disadvantage for the candidate. In fact, the Attorney General's law itself had explicit provisions for the Head of the new Criminal Investigation Directorate (DIC) to be a civilian citizen (CONADEH 1998, 49 – 60; Salomón 1997b 76 – 157).

The impact of this change has been so notorious that it actually can be considered the most important variable to set in motion a descending pattern in the noxious practice of torture, so historically pervasive to the Honduran security community. According to data offered by Comité para la Defensa de los Derechos Humanos en Honduras, CODEH (the major NGO in the human rights sector), complaints before their office on charges of torture and other cruel, inhuman or degrading punishments, for the period of 1990 to 1997, show a dramatic drop from 1994 on, which happens to be the year of the transfer from the DNI to the Public Ministry's DIC (see chart # 1).

As to the more numerous law and order police, known to Hondurans as the preventive police, to mark a difference with the investigation police that usually sees action after a crime has been committed, it passed to civilian control through a constitutional amendment ratified by Congress in December 1996 (according to the Honduran Constitution, constitutional amendments have first to be approved and then confirmed the following immediate year, in both cases by a two-third majority of the members of Congress). This opened the gate for the issuing of the new police legislation in May 1998.

The new law is inspired in concepts such as demilitarization, non-partisanship, subordination to civil authority, respect to human rights, effectiveness on crime, citizen control and accountability mechanisms and healthy management of resources. That is why it contains provisions on the Interior Security National Council, which is a collective consulting body integrated by representatives of human rights organizations (both NGOs and state-related), businesspeople associations, labor and peasant federations, women's organizations and mayors associations, along with government officials, who by the way are a minority. The legislation also creates the Internal Affairs Unit under direct command of the Minister of Security, but independent of the command chain of operational officers. The new law also establishes civilian control over the police academy and the whole security instruction and education system. This includes the functioning of an academic council, in which the main state universities and the National Commissioner for Human Rights participate with government departments and agencies in the definition and approval of study programs and curricula.

The police reform process also made way to the creation of a Ministry of Security in charge of formulating security public policy and implementing programs and projects on the matter. It has command and direction over both police bodies (criminal investigation and preventive services) and administrates correction facilities. The Ministry has also the power to oversee security private services. This huge structure is led by a civilian Minister appointed by the President. Currently, the position is held by a woman lawyer, Elizabeth Chiuz.

There is still justified concern among human rights activists over decisions like the detachment of DIC from the Attorney General's Office to put it under the command line of the Minister of Security (Interview with J. Almendárez in Box # 1), which might "contaminate" the investigation police through a more direct relation with the law and order body, which was not as thoroughly purged. Also, achievements like the specific provision for the DIC Director to be a civilian, were reverted, opening the gate for backward movements (Art. 45 Public Ministry Law cfr. with Art. 31 of the National Police Law). Nevertheless, if the current situation of the military and police is compared with that of the early 1980's, there are many reasons to believe that major changes have occurred. The process that drove, and still continues to advance, this changes, has been highly influenced by the constant action of the human rights organizations.

Something very interesting among these organizations is that they have kept a *de facto*, non-agreed, division of labor. Thus, for instance, CODEH concentrates in denunciation of human rights violations and criminal activity within the military and police. *Comité de Familiares de Detenidos Desaparecidos en Honduras*, COFADEH, an association of relatives of the disappeared, on promoting exhumations and struggling to bring into justice the military officers responsible of the 1980's "dirty war". *Comité para la Prevención y Rehabilitación de las Víctimas*

*de la Tortura*, CPRT, on overseeing the prison system. *Centro para la Investigación y Promoción de los Derechos Humanos*, CIPRODEH, on education and training. Thus, the National Commissioner for Human Rights, the Ombudsman's Office, has focused on system reform.

This strategic work has been possible in great part due to the clear distinction that the Ombudsman's Office has drawn between what is a state body and what is a governmental one. While the latter is obligated to the policies and directions of particular administrations, the former nurtures itself in more foundational and permanent principles of the common good. This institutional tenet has placed the National Commissioner for Human Rights in a sort of privileged position allowing it to perform a most needed role of bridge between people and rulers. This role includes the not always easy, and sometimes risky, task of being a critical conscience for the same State that engendered it (Interview with Juan Almendárez).

The fact that this rather recent institution, founded in 1992 but actually operational since 1993, has assumed so seriously its role as a bridge and critical conscience produced remarkable achievements and incommensurable impact on the democratization process (more detailed institutional information is available in Box # 2). Though risking to miss important activities and campaigns, not to say everyday endeavors, four landmarks in the life of the Ombudsman's Office are going to be presented in some detail.

#### **a. The Facts Speak for Themselves: The Preliminary Report on the Disappearances During the 1980's**

The practice of forced disappearances shook Honduras from 1980 to the first years of the 1990's. Although the grossest violations mainly occurred almost fifteen years ago, this continues to be one of the most divisive and controversial issues in Honduran society. And it is still so troublesome because of the tolerance authorities granted to those responsible and the impunity they continue to enjoy (National Commissioner 1994, v, 218).

In the early 1980's, Battalion 3-16, a joint section made up of personnel from several Armed Forces units initially trained in counterinsurgency methods by the United States and Argentina, disappeared at least 184 students, teachers, unionists and guerrilla members whose immense majority were never seen again, dead or alive. According to the testimony of Florencio Caballero, a Honduran military intelligence officer, before the Inter-American Court of Human Rights, starting August 1980 twenty five Honduran army officers learned interrogation techniques from CIA and FBI trainers during a six month period in facilities located in the Southwestern United States. Back in



Honduras, the training continued then with the addition of Argentinean officers (it must be kept in mind that by that time Argentina was in the way out of what later came to be known as the "Dirty War" on insurgency during the late 1970's). The new sessions, Caballero added, focussed on techniques of surveillance for following suspects and rescue kidnap victims. The group of officers became a secret unit of Honduran Armed Forces, and underwent several change of names until it definitely was named as Battalion 3-16 (Anne Manuel and José M. Vivanco's preface to National Commissioner 1994, v-vii). This name allegedly made reference to the three forces (Army, Navy and Air) and 16 units of the then Honduran Armed Forces.

From then on, Battalion 3-16 engaged in a systematic pattern of politically motivated disappearances and murders, especially intense from 1981 to 1984, period in which most of the cases reported by the Commissioner occurred. Weeks of surveillance followed by capture (by disguised agents in vehicles with stolen or absent license plates), interrogation and torture in clandestine detention centers and ultimately execution and secret burial was the Battalion's modus operandi (ibidem, vii).

Human rights activists, who at the time were not knowledgeable of the whole picture but were aware of denounces of suspicious kidnappings of persons linked to popular and leftist organizations, try to initiate habeas corpus writs before courts, with no success. Even worse, some were anonymously threatened of undergoing the same fate of those they were trying to defend, needless to say that government officials made constant references to their allegedly communist and anti-democratic sympathies. Surely, this led them to seek remedies at the international level, namely the Inter-American system for the protection of human rights.

In 1988, the Inter-American Court of Human Rights, a specialized but autonomous entity of the Organization of American States, found Honduras responsible for the disappearance of Saúl Godínez and Manfredo Velásquez and ordered to pay damages to their relatives. Equally important, it established that those disappearances were given in a context of a broader and systematic pattern. Although the government complied partially with the sentence, it failed to initiate an investigation and hold accountable those responsible. By the time the Commissioner commits himself to write a report on the disappeared, many of the officers who had participated in human rights violations through Battalion 3-16 were still occupying positions within the military hierarchy and ranks (National Commissioner 1994, ix).

The relatives of the victims and human rights groups wanted an official investigation as the Truth Commission established under United Nations auspices had recently done in El Salvador. An important role of putting

pressure was done by two emblematic organizations: Committee for the Defense of Human Rights in Honduras (CODEH) and the Committee of Relatives of the Detained-Disappeared in Honduras (COFADEH). The difference of this report from others of independent truth commissions around the world is that this was issued by a state office in a democratic act of self-examination.

On December 29, 1993 the Commissioner presented his report to the public. It documented 184 cases of disappeared persons. The report also chose 14 illustrative cases that were more deeply studied for explaining the motives, methods, results and responsibility in the pattern of forced disappearances. The victims were persons arbitrarily considered 'dangerous' by security services. They were students, union and peasant leaders considered to be 'leftist'. In other cases, people who were believed to actively support Salvadorian guerrillas and the Sandinista government in Nicaragua, and some were even disappeared due to differences with security personnel which used its limitless power to resolve personal disputes (National Commissioner 1994, 121 ff., 217-218).

Regarding the relatives of the victims, the report stated that due to the uncertainty generated by disappearances, close relatives and dependants of direct victims had suffered long term psychological, social, financial and legal effects. They had thus the right to be informed about what actually happened to their loved-ones, the right to the truth. It stated further that the Honduran State must pay compensation to the families (ibidem, 222).

When answering the question of who is to be held responsible, the Commissioner found that "[t]he State of Honduras bears an obvious responsibility" because "[i]n accordance with international law, whenever a government official acts in an official capacity and commits an act ... that violates an international treaty, the state is responsible for that violation" (225). Moreover, the report claimed that between January 1982 and March 1984, period in which disappearances dramatically raised, while General Gustavo Alvarez served as Chief of the Armed Forces, there existed a non-written but deliberate policy to eliminate leftist oppositors suspects of having ties with the Salvadorian guerrilla movement and the Sandinista regime in Nicaragua. The report regretted that this particularly tragic episode in Honduras history took place precisely under a democratically elected government.

In responding why were disappearances practiced, the report recognized that the security forces considered the criminal law system and procedures to be slow and inefficient. The legal framework was seen as an obstacle to their fight on subversion. So they decided to substitute their efforts for those of the

police and the courts. That is why it is so important to strengthen law and order and justice institutions to prevent these practices from happening again.

Even the Judiciary gave its consent by omission by not diligently investigating denounces and not fully processing writs of habeas corpus. "Judges ... abdicated their democratic authority and their constitutional control of legality" (229). The report confirmed that "[i]n general, judges did not undertake investigations at the scene of the crime, and ignored accusations and indicia that clearly identified those who were likely responsible. Judges inappropriately limited themselves, either because they believed that they lacked real control over the actions carried out by these repressive bodies, because they feared them, or because they were simply indifferent when faced with this repeated violations" (idem). Their indifference and ineffectiveness undermined the basis of the rule of law. The Commissioner concluded that not only the military, but also the judicial branch must investigate and examine its own conduct.

The Commissioner also pointed that the lack of transparent and democratic control over security apparatus and activities significantly contributed to the ordering and carrying out of the disappearances. It thus recommended that police and investigation of crimes functions be transferred to civilian authorities. The same should happen to intelligence activities, which in addition should be subject to legislative control in the form of an oversight committee (223, 224, 240).

The report reflected on the complex nature of disappearance by saying that it is not a single-like violation to a particular human right alone. Disappearance is rather an event with a concurrence of transgressions in which the victim is deprived of his/her rights to freedom and personal security, to physical integrity, to be free from torture and cruel, inhuman and degrading punishments, to an impartial trial, and finally, of the right to life (218-222).

On November 15, 1993, during the drafting of the report, and after realizing how difficult it was going to be obtaining evidence from the Honduran military and other government agencies, the Commissioner wrote to the US Ambassador to Honduras requesting material from several US government agencies. On November 23, the Commissioner got the first sign of support from United States Congress members, including senators and representatives from both Foreign Affairs Committees of the Senate and the House through a letter they wrote to the President of the United States asking to make available any relevant facts and documents pertaining to the Honduran case. On December 18, President Clinton answered lawmakers with a letter stating that his government was committed to assist efforts headed to 'shed light' on past human rights abuses in Honduras. These interchanges set in motion what it

was going to be a declassification process driven by the Commissioner which is described and analyzed in more detail in the next section of this paper.

The Commissioner sustained throughout the report that seeking truth and justice is one of the most effective ways to prevent future violations. This makes evident why human rights work has such an impact in a democratization process, especially in the building of the rule of law. Experience will later teach him that truth and justice does not necessarily come in a coincident or simultaneous manner.

**b. In Search of Hidden Truths: An Interim Report on the Declassification of United States Government Documents about Honduras**

Within the report *The Facts Speak for Themselves*, the Commissioner's Office dealt with several points related to truth seeking and what has come to be known as transitional justice. First, it stated that crimes committed have not been amnestied (National Commissioner 1994, 231-241). This has become a rather controversial issue in Honduras given that during the period between 1987 and 1991 two successive governments issued three amnesty decrees. Human rights activists and groups have since been arguing that the decrees, besides violating human rights treaties undersigned by the Honduran State, they also specifically referred to political crimes. These crimes are a penal type applicable to individuals attempting against the State but not to the same state agencies and officials who were clearly trespassing their legal powers to maintain law and order. That would simply be reducing law enforcement and security personnel to another political faction (Jiménez Puerto, 3; CONADEH 1996b, V A; CONADEH 1998, 43).

Second, the report strongly suggested that the courts should initiate a process of investigation that clarifies responsibilities of government officials and army officers mentioned in it. This task has been greatly impelled by the Special Prosecutor for Human Rights' Office established by the Public Ministry since mid 1994. With the help of CODEH, COFADEH and the Commissioner's Office, as well as the participation of forensic anthropologists from abroad, they have promoted exhumations of clandestine burial sites (known to Hondurans as *cementerios clandestinos*) to collect evidence and bring action against around twenty military and police officers supposedly involved in the disappearances. Since counselors for defense have made use of the amnesty decrees as legal exceptions for not even initiating a court procedure, the Attorney General's Office has also filled an appeal before the Supreme Court in order to have those decrees declared unconstitutional. The appeal is currently pending of decision. In any case, if amnesties are to be applicable to those responsible for

disappearances, the Supreme Court should thus rule on what exact stage of trial they should be applied. Human rights groups question how a pardon can be applied if responsibility has not been declared.

Thirdly, the report stated that authorities should arrive at the truth in order to get authentic reconciliation. Since the Commissioner does not have jurisdictional powers, and following up on the original declassification request made to US authorities back in 1993, truth seeking has been the area in which the Commissioner's Office has lately focussed its efforts regarding the disappeared. While always giving support to the Attorney General's Office and the courts. It seems that discovering truth and justice not always come together or simultaneously (as it should ideally happen), that each one can be pursued separately, is by itself an important lesson to consider. Especially when some truth is saved from the absence of justice.

The fact that a search effort had been addressed to a foreign government is in part a result of Honduras not having clear laws and regulations to preserve state archives nor any legal process for public disclosure of internal records. There is not a consistent bureaucratic culture to keep records to begin with, not to mention preserving, or even documenting situations that later can point responsibility to government officials, civil or military. Besides, witnesses and surviving victims continue to be intimidated, although a lot of time has elapsed since the "Dirty War". This makes things difficult for human rights prosecutors trying to obtain evidence. On top of all that, today's Armed Forces, though no longer involved in human rights violations, have not precisely volunteered to give information (National Commissioner 1998, 3, 77).

On August 1, 1995 National Commissioner Leo Valladares delivered a detailed declassification request to the US Ambassador to Honduras. The request had been narrowed to six cases of disappearances. It also asked for information on General Gustavo Alvarez, Chief of Honduran Armed Forces during the time most of disappearances occurred, and on Battalion 3-16. It was directed to Central Intelligence Agency, Department of Defense, Defense Intelligence Agency, US Army, National Security Council and Department of State.

In response to the request, as of January 1998, date in which the report *In Search of Hidden Truths* was made public both in Tegucigalpa and Washington, the Commissioner had received the following information (National Commissioner 1998, 111-120):

- February 1996: Officials of the US Embassy in Tegucigalpa released 588 pages of State Department documents on the case of Father James Francis Carney, an American missionary who had enrolled in a Honduran guerrilla column and was reportedly captured and disappeared by the

Honduran Army in the eastern province of Olancho during a 1983 counterinsurgency operation.

- September 1996: Officials at the US Embassy in Tegucigalpa turned over 2,033 pages of State Department documents.
- March 1997: The CIA released 126 pages, consisting of 36 documents pertaining to the Carney case and a summary of CIA documents on Father Carney. On the same date, the Defense Department (DOD) released 34 documents responsive to the entire Honduran request. According to the Commissioner's report, most of the CIA and DOD documents were heavily excised or "redacted", as the US intelligence community prefer to say.
- August 1997: The CIA Inspector General's classified report on the CIA's relationship with the Honduran military is presented to the Intelligence Committees of the US Congress. Though this document has not been received by the Commissioner's Office, the issuing of it is considered an achievement, in the sense that the Agency was so to speak cornered by the Honduran request, and especially, as it will be seen further, by pressure put by US Congress members and US national press.
- August 1997: The CIA released 313 pages on the five human rights cases involving Hondurans. According to the report, the Commissioner regretted the documents contained more information on the organization and activities of leftist groups in Honduras than they did on the kidnappings, torture and extrajudicial killings the authorities carried out.

A very interesting development in this process was the Commissioner's full use of international resources available. In this regard, it can be said that Dr. Valladares, and his Washington associate researcher, were particularly successful in lobbying US Congress and American national press. They were supported all the way through by Washington based human rights and Latin Americanist groups. Especially a NGO called National Security Archive, which has been leading an effort to release classified information pertaining to human rights abuses in Latin America and the Caribbean from US government agencies through the provisions of the Freedom of Information Act (FOIA) and government-to-government requests. In fact, the Commissioner's petition has enjoyed support from US senators and representatives all along the way, be in the form of letters to the President, the Secretary of Defense or the CIA Director, or through the introduction of legislation. A letter dated May 13, 1997 addressed to President Clinton asking him to use his power to expedite Department of Defense and CIA declassification process of Honduras-related documents was signed by fifty one members of Congress. In the same vein, and through constant sensitization on the Honduran situation, the

Commissioner and his team were able to obtain important editorial pieces from such newspapers as The New York Times, The Washington Post, The Baltimore Sun and The Los Angeles Times (a collection of this editorial pages can be seen in National Commissioner 1998, 185-213). This accomplishment was possible in great part thanks to the American press' understanding that as important as it was to Hondurans knowing the truth on past abuses to build-up from there more solid institutions, as was also the need of American public to get democratic control and accountability over their own intelligence community. On the legislative side, besides a US Senate amendment of September 20, 1996, which recommended the President to order the prompt declassification of documents, on September 25, 1997, Senator Christopher Dodd introduced the Human Rights Information Act, which required the Administration to declassify US documents on human rights in Honduras and Guatemala. The same act was introduced in the US House of Representatives on October 8, 1997 by Representative Tom Lantos. Although not all these legislative initiatives were succesful, they did produce a political impact both in Honduras and the United States.

In its interim report the Commissioner's Office concluded and expressed inconformity with both the quantity and quality of the information obtained. It also demanded a greater committment to the declassification process on the part of the Honduran government, which in some way has left the Commissioner alone in his search. The final recommendations also implied that a request to a foreign government cannot substitute for the Honduran government's former officials's truth speaking (71-79).

As to date, the Commissioner's Office continues its struggle for declassification. No matter the results, with his request to American authorities the Honduran Ombudsman has done a great service to the right to information and to the right to know the truth, understanding both of them as fundamental human rights of the Honduran people.

**c. *Foro Ciudadano*: The Commissioner's Office as a Catalyst and Coalition Builder for Lobbying**

Since early 1993, when it received a denunciation made by Josué Elí Zúniga, a former investigation police officer, regarding criminal activity among investigation police members, the Commissioner's Office got into the issue of police reform. Zuniga's denounces were the detonating factor leading President Rafael Callejas to appoint a National Ad-Hoc Commission in charge of proposing solutions to violence and criminality. One of the main conclusions of this Commission was the proposed disintegration of the military-controlled investigative body, the DNI, and its substitution by a new civilian body.

The reform process ended up also reaching the law and order police. By December 1996 Congress had ratified the constitutional amendment for this body to pass into civilian control. In 1997 Congress established a Transition Board (*Junta de Traspaso*), originally appointed by the Executive as an administrative body commissioned of "inventory transfer", in charge of directing Police during a transition period between constitutional reform and the making of new police legislation. Its mandate was set from October 1997 to May 1998.

The Commissioner's Office worried about the fact there were no systematic proposals on the part of civil society regarding the wanted kind of new police body. To the contrary, decision-making on new legislation and police human resources evaluation was being centralized by *Junta* members and a rather small group of Congress representatives. Moreover, the only two bill-drafts circulating were: one proposed by the militarized police itself and another written by a distinguished lawmaker, but product of little or no consultation to civil society organizations. In view of the situation, the Commissioner decided to propose and promote, before several NGOs, the constitution of a group in charge of lobbying Congress to model in its legislation a police body which embodied the values of demilitarization, non-partisanship, subordination to civil authority, respect for human rights, effectiveness on crime, citizen control, accountability and healthy management of resources. It was precisely the search for these values what had motivated the whole reform process to begin with.

The group, baptized as *Foro Ciudadano* (Civic Forum), had a core made up of the four major human rights NGOs, two of the three main labor federations, one peasant federation, the most senior women organization, the national NGOs' umbrella organization, academic personalities, and members of the Citizen Council of the Public Ministry. However, at the peak of the campaign, the *Foro* managed to sum about thirty organizations.

The four most important points that the *Foro* stood for were:

- Opposition to the detachment of the DIC from the Attorney General's Office to be put under the command line of a Minister of Security.
- Exhaustive purging of police officers involved in corruption and human rights violations (*Junta* members proposed to separate only about 5% of the officer corps, adducing they needed a judicial sentence or a confirmed report by the state auditing agencies to take necessary steps). In short, the *Foro* did not want a mere mechanical change in the state organizational chart.



- Participatory formulation of a long-run sighted public security policy.
- Citizen control and independent and effective internal affairs bodies.

The Commissioner did not established a special appropriation to fund the campaign. Instead, he only assigned his Defense and Public Security Analyst to be a part-time Secretary to the forum. Other organizations and individual members contributed with time, human resources and logistic support (such as places to meet and photocopies). Personal networking played also an important role in gaining access to media.

When evaluating the impact of the Forum's lobbying campaign, by comparing its goals to how the police legislation was actually enacted, can be found to be not all victorious. The DIC was detached from the Public Ministry and was placed under the command line of the Minister of Security. There was not a complete purging process of the preventive force's officer corps. However, civil society is well represented in the Interior Security National Council, where 5 out of 11 members come from private organizations. Even more, 3 of the 6 state representatives are rather autonomous in nature, namely, the Attorney General, a representative from municipal governments and the National Commissioner for Human Rights. On the other hand, an Internal Affairs Unit was established in the law and also implemented. If it is true that not all was victory, it is also true that it was a worthwhile experiment. The point is that during the transition period the *Foro* was the only face of civil society before authorities. If it were not for the forum, there would not have been a consultation process regarding Police legislation.

As it had to be, after the National Police Law (*Ley de la Policía Nacional*) was approved by Congress, the Commissioner's Office let "its creature" on its own. The Foro continues its work now focussed in the post-Hurricane Mitch reconstruction effort, making sure the government not only rebuilds but also transforms. As the primaries political campaign approaches, the Forum is also lobbying political candidates to introduce topics in their agendas.

#### **d. The Social Accountability of International Aid after Hurricane Mitch**

Hurricane Mitch was the corollary of an intense four-year period of hydro-meteorological events, ranging from drought to cyclones. Mitch was the fourth most intense hurricane in the Caribbean since records are kept. It started in October 22, 1998 as a tropical storm and from then on its main feature, besides its violence, was its erratic itinerary. On October 26 and 27 it stationed itself over the Honduran Caribbean coast, moving at only 15 kilometers per

hour (km/h) but with gusts of up to 285 km/h. That was the case when it hit Bay Islands, particularly Guanaja. On October 28 Mitch made a sudden shift to the south entering Honduran mainland on October 29, after descending from level 5 to level 3 of intensity (based on an international scale applied to this phenomena, with a range between one and five). During October 29, 30 and 31 the whole Honduran territory, Nicaraguan northwest and El Salvador's east were put under intense downpours that left destruction and death. Estimates indicate that in some Honduran and Nicaraguan regions the rain fallen during that particular period exceeded the average precipitation of an entire rainy season altogether. On October 31, Mitch left Honduran territory as a tropical storm heading northwest to Guatemala and the Yucatan peninsula (Proyecto Estado de la Región, 258 – 262).

Almost one fourth of Honduran population was directly or permanently affected one way or another: There were 6,600 dead people, 8,052 disappeared, 11,998 injured, 1,393,669 harmed, 2,100,721 evacuated and temporarily displaced (about a third of the population). In Tegucigalpa, the nation's capital, landslides buried entire neighborhoods, especially the most low-class and precarious ones located on the hillsides.

Regarding social, productive and communication infrastructure, 215 bridges were affected, 1,683 aqueduct and sewerage systems were damaged and 3,158 school classrooms were affected. In Choluteca City (south) alone, 3,000 households were destroyed by flooding and the nearby Morolica town was literally vanished from the face of the earth by the Choluteca River. The Sula Valley, a traditional stronghold of the banana industry was also severely impacted. Estimates indicate that the growth rate of Honduran real gross domestic product dropped in a 2% (Idem; PNUD, 1999, 91).

There was no way in which the country could afford to face this enormous challenge on its own resources. International aid started to flow, first for humanitarian relief and later for reconstruction and reactivation. In the light of a previous history of ineffectiveness and corruption on part of former governments when handling international aid after natural disasters (especially experiences related to Hurricane Fifi in 1974), the National Commissioner for Human Rights decided to launch what it called a Social Accountability Project.

Additionally, the Commissioner's Office legal framework allows it to perform summary and informal investigations as well as issuing recommendations and suggestions. These not only regard violations of human rights, but also concern all those illegitimate, arbitrary, abusive, defective, negligent or discriminatory acts or services delivered by public authorities or private agencies running public services (Articles 9 and 16 of its constitutional law).

By March 1999 the Commissioner produced a first report in which he started praising the Government for undertaking a monumental task of rehabilitation of the roads, and the health, education and sanitary infrastructure. Also, the ongoing endeavor of providing food and shelter to those still in need was acknowledged. The effort to get the state accounting board involved since the very beginning of international aid arrivals and distribution was seen as a sign of transparency. The report also commended the collaborative mood assumed by most of the officials whom the Commissioner requested information from.

Nevertheless, the report found indications of misconduct of both state officials and private corporations engaged in public work, in two main areas: ineffectiveness and corruption (CONADEH 1999).

Regarding ineffectiveness, one of the most common complaints received by the Commissioner's Office, through the Social Accountability Project, was related to the slowness in releasing containers from customs warehouses within port facilities, thus endangering perishable items and unnecessarily prolonging the suffering of those afflicted by the hurricane. By December 1998, two months after the tragedy, the National Port Authority (ENP) alone accounted for 400 containers stationed in Puerto Cortés (north). It was until February 1999 that the Government commissioned a specific person to deal with this problem and authorized to confiscate containers not claimed for within a reasonable lapse of time. But even at this stage, distribution of the contents required authorization of the Honduran Internal Revenue Service (DEI) as well as an approval from the Minister of the Presidency.

In the same vein, the report pointed out to the case of local governments, where mayors, as the most immediate representatives of their communities, and because of their profound knowledge of their towns, were able to promptly detect, evaluate and measure damages caused by the hurricane but render unable to face reconstruction tasks due to absent technical, material and financial resources.

On the other hand, that excessive centralization contrasted with cases of informality. In spite of enactment of special emergency legislation, the government seems to have found very difficult to achieve a consistent balance between rapidly facing a disaster situation and yet maintaining an adequate control over reconstruction operations. The Social Accountability Project found that several contracts for public work, especially to re-build road infrastructure, lacked some legal requisites and steps. For example, there were instances in which construction work had initiated without a properly endorsed contract. Likewise, some of the contracting firms offered not enough financial and technical guarantees for undertaking projects well beyond their capabilities.

As far as corruption goes, instances were found of what Hondurans have come to know as influence-trafficking (*tráfico de influencias*) which in this case took the form of companies notoriously linked to high ranked government officials, or their close relatives, being contracted for public work. A case where internationally donated goods were being sold by their custodian was reported too. But the most incredible denounce received by the Social Accountability Project was that of a national contracting firm that pretended to claim as their own, and consequently bill the Government for, a work executed by Spanish cooperation personnel in the eastern province of Olancho. Although the action was not consummated, this case reflects that corruption is not a state-related phenomenon, but rather a pervasive practice spread all over the social fabric and that State deficiencies in planning, hiring and supervision make spaces available for unethical individuals in the private sector to operate.

The Commissioner concluded that in general terms, victims of the hurricane not living in the medium-run shelters established by government and international agencies, who were by far the most numerous, were not getting any assistance and had been left out from the benefits of future social programs. He also suggested the international community to focus on specific, more safely accountable, projects and that international cooperation should consider working directly with NGOs provided they acted with transparency and within the framework of public policies.

Although the Commissioner insisted throughout the report that the cases presented were rather exceptions to the overall satisfactory management of the crisis by the Government, considering the urgent circumstances and the fact that many of the problems described grew from structural conditions, the Administration responded with an escalating and disproportionate offensive. It started as a complaint about how much this report had damaged the country's international image and thus its ability to raise funds in such a critical time. It raised to legal arguments through the media to question the Commissioner powers for inspecting public administration and ended up with a turbulent week in late April when Congress reformed the National Commissioner for Human Rights law. The amendments were clearly aimed to restrict the Commissioner's Office independence. Firstly, by reducing the incumbent appointment from six to four years and making it coincide with the presidential term in office. And secondly, by restricting its types of revisable acts to those regarding violations of human rights, leaving aside its jurisdiction over bad administration cases. Though it was an open secret that all these efforts were being orchestrated by the Executive in a sort of revenge mood, the President managed to remain silent during this week-long institutional crisis.

The Congress' actions did not go unchallenged. Human rights organizations and civil society groups in general got vocal and called for public demonstrations. The Central American Council on Human Rights (the regional ombudsman association) met in Tegucigalpa to analyze the situation and issued a solidarity manifesto. Moreover, in an unprecedented step Nordic country ambassadors to Honduras paid a timely, and conveniently publicized, visit to the Commissioner, Doctor Leo Valladares.

Less than a week later, Congress retracted on its decision leaving the Commissioner's Office term and powers intact. This incident revealed the high levels of support that the Ombudsman's institution enjoys both nationally and internationally due to its contributions to the Honduran democratization process, especially those related to demilitarization, police reform and promotion of transparency.

## **II. THREE CASES OF CIVIC PARTICIPATION TOWARDS HUMAN RIGHTS AND HUMAN DEVELOPMENT**

### **A. MAQUILA INDUSTRY, WORKING CONDITIONS AND LABOR UNION ORGANIZING: CONSUMER'S ETHICS AND STATE RESPONSIBILITY**

Few recent developments in Central America and the Caribbean basin are such clear consequences of globalization as the *maquila* industry. It combines the needs of transnational corporations to keep or broaden profitability through contracting and sub-contracting sourcing firms operating in a development country with low wages and tax exemptions, the growing need of a work force with little or no options due to short supply of low qualified jobs, and the necessity of government to avoid social crisis and losing legitimacy.

In the Honduran case, most of the firms are American and Asian producing to the United States apparel industry and they are located in the northern corridor of the country where government has created free zones for them to operate. Number-wise, 40% of the *maquila* companies established in Honduras are American, 33% Asian (mainly from Korea, Taiwan and Hong Kong), and 23% are Honduran. Joint industries, those made up of Honduran and foreign investment, account only for 2% and British enterprises, including Great Cayman's, compose only 1%. Regarding the line of business, 95.7% of cumulative value generated by the industry is linked to the textile activity. Despite the origin of capital and firms, destination of finished products is almost always the United States of America. Honduras is today the Central American greatest exporter of *maquila* garment to the US, the second in the Caribbean basin and the fifth worldwide. Most of the factories are concentrated in the northern section of the country, especially around the city of San Pedro Sula. As the banana companies did more than one hundred years ago, they have chosen the northern zone because of its proximity and easy access to the North American market (FES-H, 5 - 6). Nevertheless, to decentralize investment the current Administration has declared the whole territory as a free zone. Consequently, there are as many as 11 free zones and more than 200 factories countrywide. Since 1976, though more consistently from 1987 on, successive governments have created a legal framework attractive to foreign investment through the establishment of several regimes, such as the free zones, the industrial processing zones (ZIP) and the temporary import regulations. With some differences, all of the options provide for import and export tax waivers and exemption from municipal, consumption and income taxes (FES-H, 5-7; Bickham and Kopke, 42).

Since 1990 the *maquila* industry has become a major source of employment in the country. Estimates indicate that industry is currently employing more than 100,000 people and that this figure might double within the near future because of

the government policy to spread the free zones. For a country of about 6 million people and an Economically Active Population of 2,369,338 (PNUD, 1999, 85) that is quite a share of the labor market. Though this is a positive side of *maquila*, activists for workers rights have pointed out that creation of jobs does not necessarily mean improvements in quality of life (see interview with M. Paredes). Since late 1980's and early 1990's, when the boom started, human rights organizations have been denouncing a pattern characterized by overtime and over-intense workdays and rhythms, abusive treatment by managers and supervisors, serious and dangerous deficiencies in industrial hygiene and safety, use of child labor and a consisting policy to avoid workers' organization. In this regard, the testimony of Lesly Margoth Rodríguez, a Honduran *maquila* worker, is very illustrative. It was presented to the US Senate on September 21, 1994, from which the following free-translated excerpt is taken:

I began to work in a *maquila* factory making sweaters for Liz Clairbone when I was 13 years of age. I work for a Korean firm named Galaxy Industries located in the industrial production zone Zip Galaxy. There are several girls my age (15 years) in this industrial park and some of them were 13, like me, when they began to work.

I'd wish to tell you something about our workday. It starts at 7:30 in the morning and we work until 7:00 in the evening. Some days of the week we work until 9:00 or 10:00 in the night. We have half an hour for lunch. There are times we work 80 hours per week. The patrons have a very high production quota which we never get to complete. If anytime we get to fill the quota, they rise it the day after, so that we're always under great stress and below the quotas.

Many women workers are forced to take work home because they can't fill the quota the patrons request.

For going to the bathroom, we have to raise our hand and ask for permission. Locks are put on the bathroom doors. We can go to the bathroom twice a day, once in the morning and once in the afternoon. They keep our time in the bathroom and if we take long they punish us.

Since this factory makes sweaters, there is fluff and dust in the air that makes us cough a lot. Almost all of the workers have respiratory problems, like asthma and bronchitis.

The Ministry of Labor inspectors do nothing because the patrons don't even let them in the park. I have been told that in the United States, each of these sweaters, Liz Clairbone, are worth 90 dollars. I earn 38 dollar-cents an hour making them (FES-H, Appendix).

The situation is particularly harsh for women because the gender composition of the Honduran *maquila* industry labor force is mainly feminine. Sample-based data reveals that most of these women are single, though more than 30% are mothers, young (2 out of 3 are less than 25 years old), poorly educated (only 2 out of three have completed elementary school, though it should be borne in mind that the average schooling level for the country is 4.8 years,

UNICEF, 100) and 50% of them come from rural areas with no previous work experience and thus with little knowledge about their rights and organizational methods (FES-H, 12).

In the northern countries, working conditions in the *maquila* industry have raised consumer concerns, media attention and organized public pressure towards questionable corporate practices (Jeffcott and Yanz). From a globalized ethic standpoint, some see these developments as a positive understanding that production and consumption are interrelated processes (FES-H, 13). This movement drove major retailers and super-labels, which usually do not own manufacturing facilities abroad and do business with many factories in many countries, to develop minimum labor standards for sub-contractors to comply in the form of codes of conduct. These codes contain provisions on environment, discrimination, forced labor, child labor, wages and hours, working conditions, housing (where applicable) and freedom of association. There has even been a movement towards negotiation of multi-company codes and implementing accreditation and certification schemes.

Transnational corporations have tried to enforce them through an internal monitoring system based on global networks of "vendor compliance officers" and both regular and unannounced inspections. In the most advanced monitoring programs, these officials come from law, journalism and industrial safety backgrounds, while others have worked for human rights and religious organizations. Factories wanting to sell apparel must first pass an initial evaluation after which an agreement is signed to abide by the retailer's code. Then come the visits to interview workers and supervisors, review payroll records and assess overall conditions. If an identified transgression to the Code is not properly dealt with the transnational corporation is free to quit business with the sourcing factory (Gap Incorporated, 1999b, 1999c).

Because it is an internal mechanism, codes of conduct have not gone free of skepticism and suspect. Some northern unionist and social activists feared the codes might be public relations' tools for consumers not to worry about the labor or environment conditions the garment is produced in. Thus, in the United States, Canada, Europe and Australia consumer campaigns have pressured retailers and super-labels to go a step further from self regulation and accept civil society involvement in monitoring contractor's compliance with codes. The independent monitoring effort may include human rights groups, women and church organizations. As Jeffcott and Yanz state "these campaigns are shifting the debate from corporate responsibility to social accountability". In addition, and elaborating on the presentation of a recent work on *maquila* industry and independent monitoring in Honduras and Central America issued by the Friedrich Ebert Foundation (FES-H, 3), it can be said that independent monitoring shows such a promise because it is a win-win approach, which makes the interest of:



businesspeople to obtain profitability, consumers' wanting to enjoy high quality goods with solidarity and no guilty conscience, international and local civil society aiming to build more democratic and fair societies, and above all, of workers who need employment under decent conditions converge.

As of today, most of the experiments on independent monitoring are taking place in Central America, specifically in Guatemala, El Salvador and Honduras. One of these few experiences has been the two-year intervention of the Independent Monitoring Team (EMI) at the KIMI garment factory in Honduras. KIMI is a Korean-owned *maquila* factory operating at ZIP Continental industrial park in the northern town of La Lima.

Two factors make this case outstanding. First, it was a rather national-based experiment, and second, it ended up being a transitional mechanism making way to workers' control and empowerment. It all started when workers were organizing a union. Several of them were fired, international solidarity activities arose and US retailers sourcing from the factory, including Macy's and JC Penny, suspended orders. Employment for 500 *maquila* workers was at risk. On June 2, 1997, an agreement for independent monitoring was signed with the contractor rather than the North American retailers. The three overseeing organizations were the Committee for the Defense of Human Rights in Honduras, CODEH, which is the most important and senior NGO in the sector, CODEMUH, a women rights NGO operating in the northwest of the country and the Honduran section of the Jesuit order, all grouped in what was known as the EMI. These organizations were not grouped by chance. In fact, human rights organizations, namely CODEH, were the first to receive complaints against *maquila* industry working conditions since the late eighties. They assumed this work trying to protect economic and social rights of the workers (Maldonado; Interview with M. Paredes in Box # 3). A natural consequence of the agreement being negotiated between the manufacturer and local groups was that the monitoring standard was not a transnational code of conduct but the national labor legislation. That fact is reflected in the way EMI defined independent monitoring as "the permanent supervision of the work center by representatives of independent groups, with acknowledged moral authority, aimed to guaranteeing labor and human rights of the *maquila* industry workers, rights which are contained in the national and international legislation" (FES-H, 15, free translation and underlining by the consultant).

The agreement specifically targeted four areas: Treatment to pregnant women, abusive treatment on the part of one of the managers, freedom of organization and the situation of suspended workers. The independent monitoring team met with managers and workers on a monthly basis and succeeded in facilitating the return of several suspended workers and a collective bargaining process that culminated in March 19, 1999 with the signing of the first labor contract between the union (SITRAKIMIH) and the firm. Jobs were maintained

while US retailers continued to source from the factory. At this point, EMI considered the workers were ready to make it on their own, so it stepped aside and ended its role at the factory.

The case is also rich to study tensions and role confusion between the union and the independent monitoring group. Maritza Paredes, CODEMUH's representative to EMI, reported that questions such as: is EMI's mission to foster the union? or, is it EMI an independent observer in charge only of verifying that labor and human rights are respected, or it is supposed to take and substantiate complaints? arose during the process. Some of the union members even harbored some kind of mistrust towards EMI. In this regard, after the monitoring team has retired from the plant, an interesting development has taken place when the owner of the industrial park, where KIMI operates along with other factories, has threatened to expulse KIMI out of the park in order to keep it union free (Jeffcott and Yanz). This seems to shift debate from fear of independent monitoring usurping the functions of democratically elected union leadership to rather how long such an effort should stay in place. As fragile as a workers' organization is in its first stages, independent monitoring can play an important nurturing role.

Lastly it will be good to reflect on the macro and long-term applicability of codes of conduct and independent monitoring. This introduces the issue of the role of the State, a traditional guest to industrial relations' affairs but the great absent in the independent monitoring process. Interestingly enough, those involved in independent monitoring projects in Central America, in Honduras in particular, have made the point that codes of conduct and independent monitoring would not be necessary if the national government had enforced national labor legislation in the first place. So, though they see codes of conduct and independent monitoring as useful catalyst, complementing and reinforcing tools, future efforts must also focus on pushing the State to assume its role of enforcer of the national legislation and international labor agreements. Paraphrasing Maritza Paredes, the same way Honduran civil society, with support of international groups, undertook the military and police reform, it must now embark in the Ministry of Labor reform (Interview with M. Paredes; Maldonado; Jeffcott and Yanz).

## **B. THE NEW LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROTECTING CHILDREN'S RIGHTS**

According to population projections, last national census was taken in 1988, by 1998 the country had a total of 5,901,239 inhabitants. From that total 2,955,204 were men and 2,946,035 were women. In turn, more than 53% were under 19 years of age, with an absolute number of 3,145,899. If we assume that a child is every human being from his/her birth till 18 years old (Convention on the Rights of the Child, Article 1), Honduras' demographic data clearly reveals that children are the nation's most important population group. However, a quick look into health, education and social integration standards makes evident the fact that they have not been enjoying a proportional degree of attention from governments in particular and society at large, important developments have been taking place though (unless otherwise indicated, data comes from UNICEF, 35, 82, 89, 94, 98, 100, 106, 145 and 147). For example, prevalence of chronic malnutrition in children under five years was 37.8% in 1996, though progress had been made from a 43% in 1991. Between 1994 and 1998, the government vaccination program has managed to keep covering rates above 90% of children under five years in the four main biological immune-preventable types. Mortality ratios for the same age group have declined from 65 to 53 in 1,000 born alive if data from 1990 is compared to 1996's. Shifting to education, by 1996 enrolment rates for primary level covered 87% of children in school age. Efficiency continues to be low since an average student spends 6.7 years to achieve only 4.8 grades of schooling. In young people between 14 and 19 years of age, by 1995 the covering of secondary education was of 34%, which makes fair to say that almost two thirds of that population group is not following a formal learning program. If the pyramid of education is analyzed, it will show that only 33% of those completing primary education get into secondary education. And for those graduating from high school only 7% have access to higher education. Child labor, street children and youth gangs continue also to be critical issues to Honduran society. By 1998, there were more than 97,000 children under 15 years and more than 261,000 adolescents working in Honduras, mainly in the informal sector. Together, the child and adolescent working population made a 16.8% of total WP (PNUD 1999, 115). Although a rigorous census has not been taken, several "pre-Mitch" studies indicated that in Tegucigalpa, the capital city, alone there is an average of 5,500 street children. This amount may have increased after this climatological disaster. Finally, and according to Police data, by September 1999 there were a total of 462 violent youth gangs operating all over the country, but especially in urban settings, which amount to 30,921 youngsters (Policía Preventiva, 1). Gangs (known in Honduras as *maras*) are a development of the 1990's in what seems to be the corollary of years of poverty, domestic abuse, failures of the educational system, absence of positive alternatives for using leisure time and lack of youth organization.

On November 20, 1989 the United Nations' General Assembly issued the Convention on the Rights of the Child. The Honduran State promptly ratified it on May 31, 1990. Along with the Convention on the Elimination of All Forms of Discrimination against Women, it has been the most broadly and rapidly supported human rights treaty, achieving in the first five years since its adoption the adherence of 90% of the State members. The Convention reaffirms the application of human rights, previously recognized to all human beings in other treaties, to children. This includes freedom of expression, association and religion. It also increases the protection of certain rights to take into account children's specific needs and vulnerabilities, that is the case of special provisions for working conditions and justice system. Moreover, the Convention set rules for areas specifically related to children, like adoption, access to primary education and protection against family negligence and abuse (Nigel Cantwell in introductory essay to JNBS' edition of the Convention). Three are its general principles: Non-discrimination (Art. 2), best interest of the child (Art. 3), survival and development (Art. 6) and respect for the views of the child (Art. 12). At the monitoring side, the Convention establishes a Committee of experts in charge of supervising the implementation of the Convention provisions at the national level. The Committee can, additionally to each state party report, request and receive information from international and local NGOs. In the Honduran case, as this same Committee on the Rights of the Child (CRC) observes, the state party has showed its willingness "to use this report as a call for action, a guide and a situation analysis, to formulate, evaluate and monitor the most important advances ..." (CRC, par. 2). The good news is that reports on the compliance to Convention provisions (Honduras presented its second report on May 1999) are not being submitted only as a bureaucratic requisite to fulfill but also as a tool for setting targets and measuring performance in the national context. Also, they have served as a gate for civil society to analyze the national situation, propose solutions and hold the government accountable (COIPRODEN, the umbrella organization for NGOs in the sector has also handed-in its second additional report).

Besides from the national situation and the impact of the Convention, there is another element at the international context that merits to be mentioned as a basis to the Honduran movement to adapt the legal and institutional framework for protecting children's rights: The pioneering UNICEF rights-based approach to programming. Introduced from mid 1990's on, the human rights approach assumes that development processes should be evaluated on the basis of their contribution to the effective realization of children's rights. Several consequences derive from such a perspective. First, treaty signing is no longer seen as a mere declaration of intentions but rather as a commitment to fully realize the contents of the provisions. Second, there is an entitlement to demand the implementation of the Convention. This makes program beneficiaries aware and active subjects struggling for their rights, instead of passive receptacles of assistance. Fulfillment of rights becomes then a social (not only state) responsibility. And thirdly, since

rights are universal and indivisible, policies and actions have to be general in covering and holistic in approach (UNICEF, 8-11).

By the time the Honduran government ratified the Convention, a 1969 legislation called *Ley de Jurisdicción de Menores* (Statute of Minors Jurisdiction) was in effect. This law was based on the irregular situation approach, which saw children as objects of special tutelage and not as subjects of rights. The institution in charge of applying that model was the Social Welfare Board (*Junta Nacional de Bienestar Social*), which led by the country's first ladies had a rather relief and charitable profile. While the 1982 Constitution, currently in force, has a complete chapter on children's rights (Arts. 119-126), it emphasizes those related to protection, saying nothing about those related to children "citizenship" and participation. It has a clear provision on not allowing the entrance of persons under 18 years to a prison, though.

In 1990, Honduras becomes one of the first twenty states to ratify the Convention. Looking for the provisions of the Convention to become operational and to establish a new institutional framework for the sector, Rafael Callejas Administration (1990-1994) engages in the consultation and drafting process of what would later be the Children and Adolescents Code and the Statute of the Honduran Institute of Children and the Family (IHNFA). It can be said safely that modernity in Honduran law-making is inaugurated with the discussion process towards the Code, since both legitimacy-seeking and technical support were constantly present during this first stage of bill-drafting led by the Executive Branch through the Technical Secretariat to the Social Cabinet. The process was highly participatory, meetings and consultations were conducted with public agencies, NGOs and international bodies represented in the country. Above all, children were integrated into debates. On the other hand, bill-drafting was supported by sector evaluation and the preparation of a compilation and analysis of laws and provisions related to children then in force (Interview with T. Andino in Box # 4; CIPRODEH, 16-22).

Entrance of the bill to Congress coincided with the coming of a new Administration and the raising concern on the part of conservative sectors about the contents of the proposed code. In the Executive Branch, more than the Presidency, it was the executive management of the Social Welfare Board who lobbied Congress and started a internal methodological and organizational transition from *Junta* to what would become IHNFA. Changes at programs privileged a preventive and community-based approach to substitute for the assisting and residential programs that *Junta* had traditionally promoted for children at social risk. At Congress the Code was turned not to the Children and Family Committee but to the General Legislation one, which was presided by a distinguished jurist but with a strong civil code background. Additionally, some conservative press, traditional-family-value groups, mainly linked to the Catholic

Church, and local leaders of US-based religious ministries started to get vocal over their perceived risk of granting too much freedom to youngsters. They feared respect for the views of the child, freedom of opinion, expression and association might lead to the undermining of parental authority, insubordination at school and increasing rates of juvenile delinquency. It is within this context that the law proposed is finally approved on May 30, 1996. Though not impairing, the Code had suffered several changes from its Social Cabinet's original version. Those modifications would render later application problems.

Nevertheless, the Code represents a substantial improvement from previous conceptions and regulations. In the general principles section it clearly states that government will seek to coordinate efforts with the public sector and that all administrative and judicial bodies must give priority to businesses in which children are involved. Then, and throughout 70 articles, it develops in greater detail the civil, economic, social and cultural rights the Convention grants to children, trying to make them more operational at the national level. As the juvenile justice system is concerned, the Code introduces a specialized jurisdiction with due process provisions for youth offenders. It sets in motion filtering procedures, in charge of the Attorney General's Office, to avoid trial and establishes a list of alternative measures for the deprivation of liberty. These measures include prohibition to visit certain places, to frequent some people or leave town, community service, reparation and restoration (especially with property-related crimes), parole and probation services and open prison regimes. Although these practices may sound standard for other countries, they are indeed highly innovative for Honduras. Finally, it establishes an institutional framework composed of the Honduran Institute of Children and the Family (successor of JNBS), as the coordinating and leading administrative body in the sector, the children and adolescent courts and local mechanisms linked to municipal governments. Also, trial rules make ample room for the Attorney General's Office to intervene. In this regard, the Public Ministry has delegated this function in a Special Attorney for Children.

Although important advances have been made as a consequence the Convention, there are still several challenges to face regarding the new legal and institutional framework for protecting children rights. One of them is the always-present risk of backward movements. Just during mid-December and while finishing this report, the President of the Supreme Court declared his intention to submit a bill before Congress in order to lower the imputable penal age from 18 to 16 or down to 14 years old, under the pretext that organized crime was using children to commit felonies since they were aware of judges limitations to impose penalties on these minors due to the provisions of the Children and Adolescents Code. Paradoxically, it does not seem to be a parallel interest in investigating a noxious pattern of summary and extra-judicial executions of alleged criminals, most of them gang members, that has claimed the lives of hundreds of youngsters

during the present decade (CODEH, 5-8). The other challenge has to do with the effective strengthening of local mechanisms of protection. In this regard the figure of the Municipal Children's Defenders shows a lot of hope (see Chart # 2). However, a lot of work has to be done in the training and organization of these actors.

Voicing a Honduran activist, ten years after the Convention, the rights of the children have earned a place in the national agenda and there is at least a basic institutional development (Interview with T. Andino). Probably none of those accomplishments would have been possible without the Convention's setting in motion of the Honduran internal forces for change.

### **C. WOMEN'S ORGANIZATIONS AND DOMESTIC VIOLENCE: RAISING AWARENESS AND LOBBYING FOR CHANGE**

Experts recognize that at a global level victims of violence against women probably exceed the number for any other category of abuse, yet the problem has remained invisible and outside the mainstream of human rights debate and movement until the present decade (Charlotte Bunch in UNDP / UNHCHR / Norway, 176-178). In the voice of a Honduran women's rights activist "before the 1990's, the problem of domestic violence was a private matter" (Interview with R. Fonseca in Box # 5). To correct this unjustified absence in the Americas, the General Assembly of the Organization of American States (OAS) approves in 1994 the Inter-American Convention to Prevent, Sanction and Eradicate Violence against Women, also known as the "Belem do Pará Convention". The Convention's main contribution rested in introducing domestic violence into the human rights domain through the establishment on the one hand, of the women right of a life free-from-violence, and on the other hand, the obligation of the states to protect that right. That is nothing less than to hold the State accountable for violence against women, to create its obligation to adopt the necessary legislative, policy and practical steps to make the Convention effective (Art. 7h).

For the Pan-American Health Organization (PAHO) domestic violence is among the ten most frequent health problems of Honduran women (UNICEF, 126). Data from the Honduran NGO Center for Women Rights (CDM) indicate that at least four out of ten Honduran women have been attacked by their male partners at some point in their lives (CONADEH 1998, 129). UNICEF also refers that 72% of denounced incidents take place at home. Moreover, the magnitude of the problem is such that it is surely affecting rearing and socialization process of Honduran children. All of this leaving aside rape, sexual exploitation and trafficking and sexual harassment problems all over the country.

Since the 1960's there has been a silent but steady women movement in Honduras mainly linked to rural development activities and slum neighborhood committees organizations in the form of peasant women cooperatives, housewives clubs and communal organizations. Many of these organizations were initially nurtured and sheltered by the Catholic Church. Though it can be said that these organizations could have reinforced traditional feminine roles, it cannot be denied that women have played a fundamental role in such fields like micro-credit, water supply and vaccination campaigns. During the agitated 1980's women also had a high profile in human rights and pacifist organizations like the Committee of Relatives of the Detained-Disappeared in Honduras (COFADEH) and the Honduran Committee of Women for Peace "Visitación Padilla" (named after an anti-dictatorial and anti-imperialist woman fighter of the 1940's). All of these organizations continue to be active and relevant. But it is until the late 1980's and the early



1990's that organizations with a clear feminist agenda entered the stage (UNICEF, 130). The leadership of these new organizations was mostly made up of young and academically trained women, some of them also with a leftist political background from the 1980's.

With the Belem do Pará Convention as a reference and recognizing the legislative limitations prevailing in the country,<sup>1</sup> these new breed of women organizations undertook from 1995 on, first an awareness, and later a lobbying campaign to tackle the domestic violence problem. For this task, they established a coalition called *Colectivo contra la Violencia* (Coalition against Violence), which was instrumental in creating a group identity that was needed to strengthen the campaign strategy.

The clear sense of purpose around a shared goal made possible what otherwise would have been a first challenge to overcome, the very fact of having different organizations with strong identities working together. Lourdes Beneria's statement that it does not exist "a feminism", but rather a variety of feminisms coinciding in some basic objectives of social and political change proves to be true in the case of Honduras (Prologue to Mendoza 1996, 17). What started as an effort of seven organizations in 1995, increasing to thirteen in 1996, ended up in 1997 with a coalition that managed to involve state institutions, like the Public Ministry, the National Commissioner for Human Rights, the Church and the political establishment (Interview with R. Fonseca).

Navigating through the political system, especially the Legislative, understanding professional politicians' viewpoints and needs plus being able to drive them into the movement's aims was probably the hardest part of the work. The Coalition had a legal team that had been monitoring developments in other countries, so they were in a position to compare and balance several approaches ranging from pedagogic-oriented to punitive legislation. Assuming that women victims did want to stop violence but generally did not want to put an end to their relationships and family life, they adopted a midway approach. The first draft was broadly discussed within the *Colectivo* and before even finishing this consultation process it was introduced to Congress thanks to the officious intervention of a congresswoman. There, they capitalized the fact that 1997 was an election year. The *Colectivo* managed to get access for its legal team to be present at Committee deliberations, which proved to be a key element to educate resisting congressmen and reduce opposition to several provisions in the draft. On September 11, 1997, two and a half years after having started working together, the Statute against Domestic Violence was finally approved.

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<sup>1</sup> For a denounce to be made under the Injuries penal type the damages inflicted must be of those that take ten or more days to heal, which practically meant that only a dying woman could charge her abusive spouse.

The law starts by defining domestic violence on the basis of an unequal exercise of power. It then identifies four types of violence: physical, psychological, sexual and patrimonial. It clearly establishes that its regulations pertain to the public law domain, so its provisions cannot be negotiated or transacted by private individuals. As a consequence, transgression of its rules is object of public prosecution. Regarding the plaintiff, the statute introduces sharp breakaways from ordinary judicial practices since denounces can be made not only by the women victim but also by any member of the nuclear family, any official or professional who becomes aware of the situation, women NGOs and by any person who learns of the case. On the basis of the nearest, more rapid and best option available, domestic violence incidents might be denounced before family courts, ordinary (non-specialized) courts, Police and the Public Ministry.

The law stipulates three kinds of protective measures for the victims: security measures, precaution measures and guaranteeing measures. Security measures are emergency intervention steps aimed to stop the acts of actual and current violence and include temporarily taking out the offender from home, prohibition to approach the victim's household or work center, taking the offender into custody for no longer than twenty four hours, warnings and reprimands. In those cases in which women have been forced to leave the household to avoid physical damage she can be taken back into home while the offender is ordered to leave. If the offender is caught in the act, Police is given the power to enter a place of residency. Precautionary measures are intended to prevent domestic violence incidents from happening again through re-education of offenders and raising victim's self-esteem. They include compulsory attendance to re-educational services for offenders and referring victims to family counseling. Thirdly, guaranteeing measures point to secure family and children support and might include setting provisional alimonies and children custody provisions as well as preventing the offender from concluding contracts and transactions that may endanger family patrimony.

The statute also seeks to protect some procedural rights of the victims before police and court personnel. Thus, it establishes provisions for a respectful interrogation, for her undergoing only the appropriate and necessary medical examinations, to request police assistance in any circumstance in which her life and her family's are threatened and for not being confronted with the offender if she is not in a condition to do so. These rules have a great relevance if we bear in mind the lack of gender sensitivity currently prevailing in most of the law and order and justice system.

The domestic violence law establishes community service as a penalty for inobservance of the measures and for those repeating violence after having complied with the court's rulings the first instance. For those recidivists who are

not observing the measures ordered, the statute establishes a crossover to criminal law.

In the same vein, a no less important parallel process to the campaign for stopping violence against women was carried out by the Center for Women's Rights (CDM), one of the leading organizations of the *Colectivo*. It consisted of taking advantage of a broader reform to the Penal Code to introduce amendments regarding sexual offenses and to create a penal type for inner-family violence that could also be applied to domestic violence recidivism. In short, amendments to Penal Code on these matters were:

- Punishments were increased for rape and lascivious acts (sexual molestation).
- Rape became a publicly prosecuted crime (before this reform it admitted a private pardon by the victim, which in the case of minors made way for economical transactions with parents).
- A new penal type was established for sexual harassment in the workplace and academic environments.
- A new penal type was established for fraud to avoid family support.
- Two new penal types were established for inner-family violence, which could be applied for offenses against women, children and any other relative.

Feminist organizations know they have come a long way in the fight of violence against women. A good example of these improvements is reflected in the steadily increasing number of denunciations presented by women before the Special Attorney for Women at the Public Ministry (see Chart # 3). Available data reveals that there is an increase in absolute numbers from 1997 to 1998, which can be associated to the issuing of the Domestic Violence Law. Also, in the same period there is an increase in efficiency rates since more and more cases are substantiated to bring action before the courts. Though both changes might also be attributed to a vegetative growth and to organizational and managerial shifts, the point is that there is a clear ascendant pattern in complaints and cases brought to justice. However, there is still much to be done regarding effective application of the new legal instruments. A recent workshop conducted by CDM, revealed that there is still a lack of political will to implement institutional mechanisms. The workshop included participants from other women's organizations and state institutions related to the framework established by the law against domestic violence. The absence of the specialized courts provided by the statute and the ineffectiveness of the sector coordinating body, the National Institute for Women (INAM), are evidences of that negligence. Consequently, not enough human and material resources are being dedicated to confront the problem. For instance, workshop participants demanded the State should create temporary shelters for battered women. Other limitations were also identified that are more closely

linked to the activity of women NGOs. For example, not promoting and divulging enough the contents of the statute and the penal code reforms, the absence of a continuous training program for police officers and judges, which should include consultations on the practical procedural problems and silences of the statute and the fact there is still a huge challenge to establish rehabilitation programs for offenders (Interview with R. Fonseca).

When evaluating the Honduran women's rights movement of the 1990's, the one feature that calls attention the most is how in spite of being so few activists they have been able to accomplish so much. In other words, the movement has been anything but massive. Part of the explanation may well lie on the fact that they have broadened the political action repertoire by using concrete, impressive, imaginative and symbolic acts of presence and protest, which, because of their freshness attracted attention from the national press and the political class. But this strength is at the same time a weakness. The movement has yet to transcend its urban middle class nature and outreach to low class women (an interesting analysis of the current composition of the feminist organizations and dilemmas faced by activists trying to overcome class barriers can be found in Mendoza, 161-172). That and defining new issues and rights to fight for in a post-domestic violence agenda seem to be the greatest challenges faced by Honduran feminism in the near future.

## EPILOGUE

Through the use of seven cases drawn from the experience of Honduran civic and state organizations, this study has tried to make evidence available to support the idea that there is a nascent citizenship movement and a timid, but promising, effort on the part of the State to critically revise its acts. The examples came from campaigns and efforts undertaken during the 1990's by human rights, children's rights and women's rights organizations, as well as from broader coalitions. This birth of citizenship and state conscience has been mounted over an everyday integration of human development and human rights in a society that, rather intermittently, fights to be more and more participative and democratic.

Nevertheless, in each of the areas explored there are still unresolved issues and challenges. Regarding demilitarization and police reform, questions arise about the permanency of the changes seen so far. For instance, just during December 1999, and while this paper was being prepared, a territorial dispute between Nicaragua and Honduras erupted when Honduran Congress approved a maritime borders treaty with Colombia, which Nicaragua claims affects its ocean shelf in the Caribbean Sea. Though there have not been armed incidents or an immediate escalation of armamentism, this will be an opportunity for those wanting to return to mandatory military service and to strengthen the military, with all the political and socio-economic implications such moves might have. At a more particular level, there is yet a need to complete the police reform process, especially regarding police education and training in human rights and the effective functioning of citizen participation and control mechanisms. The pervasive pattern of summary and arbitrary executions, particularly of youth gang members, also poses a big challenge to the building of the rule of law. If today's executing squads are operating with impunity, it is in great part because justice has not been done in the cases of the disappeared persons in the last decade. If someone committed human rights abuses without being held responsible, there will always be an open door for those excusing themselves on the grounds that the criminal justice system is slow and ineffective.

In respect to the *maquila* industry, and from a human development standpoint, there is still a need for government to understand that is not only important to prepare conditions for investment to come, but also to create an environment where workers might lead a decent life. This means that besides improving port and road facilities and extending tax exemption zones, there is a requirement (and an obligation, too) to develop basic services, like water and sanitation, education and housing, in those areas where industrial parks are operating or going to do so. Equally important is the challenge to strengthen all the mechanisms for resolution of labor disputes, especially the Ministry of Labor. This is an endeavor that must be coordinately undertaken by all actors involved.

As for the situation in the children and women's rights sectors, probably the most important challenge is getting the State to go beyond discourse and actually allocate resources to make possible the full enjoyment of human rights for no less than three quarters of the country's population. Only this way, the programs established by new legislation and institutions can be completely implemented. For this to happen, NGOs, specialized state agencies and international development cooperation bodies have to reinforce their awareness and sensitization campaigns. Besides, NGOs in both areas should not only participate in spaces yielded by government agencies, but also create their own spaces and agendas in a more proactive fashion.

Overall, there is a need to deepen political and social participation, to make it descend from its current middle-class and profesional base to a more grassroots level. On the sinuous road to this objective, poverty remains being an obstacle. Moreover, the human impact of Hurricane Mitch has aggravated the problem. When most of the population is centered in subsistence concerns, it is very difficult for participation to flourish and expand. In this context, the challenge for government is to maintain spaces opened. NGOs and institutions like the National Commissioner for Human Rights have to build people's capabilities for participation. This includes training on specific rights, organization and management, lobbying, planning and project drafting, political analysis, sustainability and fund-raising. For social activists, there is a moral obligation to permanently seek issues and fields of action that are relevant to the most immediate preoccupations of the vast majorities, without forgetting what has been accomplished so far.

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In the '80s militarism was felt in all spheres of the life of this country. Nothing remained untouched. No step could be made without seeing soldiers that did not smile and no doubt, it provoked fear. It was the story of national security, of the disappeared. There was a very strong ideological confrontation and no transition. People were either on the right or the left, in popular sectors or on the human right's side. As a result, youth today is not what it used to be; it lacks the dreams and aspirations that even in those times young people had.

Without question, dialogue was confrontational. I was under surveillance for over three years, day in and day out when I was the Rector of the University. Bombs were placed in our car, our office was machine-gunned. I have been psychologically tortured and condemned by death squads. Those were moments of terror, of psychological warfare. Then, it was a painful experience to see many of our friends kidnapped and assassinated. We were lied to, because we were told that in order to avoid a warfare climate in Honduras the foreign military bases were installed. This was an offense to us because we knew they were training torturers. The whole situation created an environment of disrespect for human rights. Moreover, through mandatory military recruitment many young people were killed, kidnapped and tortured. It is something I lived in the flesh, either as a physician caring for the tortured, or receiving complaints of diverse nature. I would say that it was a strongly repressive period. This was during the so-called democratization era in Honduras where we had a civil government with a military face and military impunity was very strong. This predominated with the ascent to power of Suazo Córdova and General Alvarez Martínez. Honduras was accused by the Inter-American Court of Human Rights, the work of Amnesty International, of people and organizations in the United States, Europe and Central America, many sectors of the Church and many other organizations was very important to save many cases, influence behavior, public opinion and change governmental policies. It is for their solidarity that I am still alive. A phone call, a message can be very important to give one more strength in difficult moments.

Then, the most important influences were the peace processes generated in Nicaragua, El Salvador and Guatemala. But they also engendered more poverty. Within that framework, some undeniably positive structures emerged: the Attorney General's Office, the DIC, both of which have debilitated. A positive side is the transformation of the military police into a civil one, which is a process that still has a long way to go. However, the Army is an economic force and we now have a parallel army made up of private security teams, possibly bigger than the Army.

We have a positive vision of the Commissioner for Human Rights. I think that its social accountability project created the opposition within the government. When its law was recently threatened, I played a very active role in its defense through popular protest. Even when at present I am being legally sued for this support, I can sit down and talk with an honest person such as the Commissioner about the human rights violations.

The impact of the work of the Commissioner, of NGOs such as CODEH, COFADEH and many others, can be seen at the level of denouncements. It cannot be denied that they have been the voices that in a courageous and historical way have kept the people informed about what was happening in the country regarding human rights. We have found government officials acting as intermediaries among the high spheres of power and these very honest people have accused the same government. This generates a certain confidence. Since the past government, there has been a qualitative development of institutions. I believe that if vernacular politics are kept out of public appointments and as long as the Attorney General and the Human Rights Commissioner are given support, they will not debilitate.

The transformation process of the police is slow. The fact that I am also being legally sued by the Police for coming to the defense of the indigenous people's protest gives me the impression that there is a group with the same thoughts of the past and that they have their quota of power in this country. Moreover, is evident that they are in favor of repression, of extra-judicial executions amounting to 200 since January. No explanation has been given for this. What is subjacent to all this is that poor people are being assassinated. A solution has to be found to all of it. That diminishes any positive image that a government might have.

A historical fact, however, is the signing of important agreements between the Center for Torture Prevention and the Attorney General's Office. This reflects that there has been progress in our relations. The fact that together with the Attorney General we made visits to the prisons or that our staff participates in human right's education with the Police Academy is also very positive.

However, the Armed Forces have a historical responsibility, as do other forces that "educated" them. Human beings are not exempt from fault but we do not understand why the law applies to some and not to all. It is important to know who we are forgiving, the reason for these crimes, the persons and the institutions responsible. This is important in order for this not to happen ever again.

One of our weaknesses is not having neutralized military mentality, we still have military bases and maneuvers in Honduran soil. Being such a poor country we should have stronger commitments to the national reconstruction process. Another one is poverty and also the promotion of violence through the media, the unrestricted sale of arms. At the level of the human rights struggle we need to incorporate gender, to have a less patriarchal vision and be more tolerant of the ideas of others. We also need to have a vision of the future, grow in spirituality and especially articulate human rights to the struggle of

our ancestors with an anthropocentric and eco-centric vision. In essence, to articulate the development of the world to our own development and at the same time be ourselves. (Juan Almendárez, Center for the Prevention of Torture, CPRT, Tegucigalpa, Honduras).

**THE NATIONAL COMMISSIONER FOR HUMAN RIGHTS IN HONDURAS:  
SUMMARY OF LEGAL FRAMEWORK, JURISDICTION AND POWERS**

Enabling Legislation, Amendments and Regulations:	<ul style="list-style-type: none"> <li>• Decree # 191-94, Constitutional Amendment, 12/15/94: Reforms Art. 59 of the Constitution, establishing the National Commissioner of Human Rights</li> <li>• Decree # 2-95, Constitutional Ratification, 2/7/95: Ratifies Decree # 191-94</li> <li>• Decree # 153-95, Legislative Decree, 10/24/95: National Commissioner of Human Rights law</li> </ul>
Appointing Authority:	Congress
Date of Establishment:	6/8/92 (Originally established by the President in Executive Decree # 26-92
Term:	Six years, re-election allowed
Jurisdiction Over:	<ul style="list-style-type: none"> <li>• All public agencies and authorities from Legislative, Executive and Judicial branches, both civil and military</li> <li>• Private agencies running public services</li> </ul>
Restrictions on Jurisdiction:	In cases where a judicial decision is pending
Complainant:	Any person, regardless of citizenship, age, gender or any other condition, who feels afflicted by an arbitrary administrative action, a violation of human rights or other illegal behavior from an authority of the Honduran government
Types of Revisable Acts:	<ul style="list-style-type: none"> <li>• All those regarding illegitimate, arbitrary, abusive, defective, negligent or discriminatory acts or services delivered by public authorities or private agencies running public services</li> <li>• All those regarding violations of human rights in the broadest sense</li> </ul>

Types of Action:	<ul style="list-style-type: none"> <li>• Summary and informal investigations</li> <li>• Recommendations and suggestions</li> </ul>
Investigative Procedures:	<ul style="list-style-type: none"> <li>• Inspections</li> <li>• Requests and analysis of documents and information</li> <li>• Interviews</li> </ul>
Basis for decisions:	<ul style="list-style-type: none"> <li>• Investigation results</li> <li>• Honduran law</li> <li>• International law of human rights</li> </ul>
Remedy:	A report stating his/her recommendations and suggestions to the agency or official declared responsible
Follow-up Procedures:	<ul style="list-style-type: none"> <li>• Within one month the addressee of the recommendation must submit a written response to the report, indicating actions taken</li> <li>• If this does not happen, the Ombudsman can make public his/her report</li> <li>• Those officials who obstruct the Commissioner's investigation or refuse to submit requested information might be indicted for contempt</li> <li>• In those instances where criminal actions have been detected, the Ombudsman will refer the case to the Attorney General</li> </ul>

*Source: Preparation based on a broader scheme titled "The National Commissioner for Human Rights in a Nutshell" written by the consultant while working as a Commissioner's staff member. The original document belongs to the Commissioner's Office and it is being used with authorization.*

*Maquila* factories have a positive side that is employment generation. To the workers it is an alternative to support their families, but we can't remain at that level, the issue is their quality of life. The salaries, even though higher than the minimum wage allowed, neither respond to the inflation levels in the country, nor to the requirements of a population which upon migrating to the main cities, has to adapt to the conditions offered by local governments. This is the case of Choloma and Villanueva which even though have roads in very good condition to transport products, were not ready to provide the necessary services to assimilate this overpopulation.

These factory workers are essentially women working in environments that are not adequate for a person, with intensive shifts and working rhythms. We are also talking about a lack of control of the fluff coming from cloth. I entered the Kimi factory once, for example, and I couldn't breathe, I was surprised to see how those women spend the whole day there. Besides, they live in very reduced spaces, sometimes shared with others working in the opposite shift. Moreover, as women they carry all the historical burden of fear and low self esteem. This influences the subordinated relationship they establish with the patrons.

The first years were the hardest. We could find beaten pregnant women, in complete disrespect for a woman's dignity, for the dignity of any human being or person. They were placed in punishment facing a wall or forced to remain in the patios under the burning sun. There were 12, 13, 14 year olds working. We tried the case of a girl who was limping as a result of a beating by a Korean woman. In addition, there were difficulties in the organization of the unions and the maternity problem, which still exists. Women were tested for pregnancy and urine samples taken in front of another person. The abuses were countless, remembering us of the pre-historic stages of the workers movement in the U.S. when those women burned in many factories or when all those terrible things happened here in the banana fields.

This resulted in actions to make the governmental offices work because there was a hideous imbalance between the development of the industry as a generator of employment and those offices that could help solve conflicts. Thanks to local intervention and international solidarity the situation was denounced in the U.S. Congress and even though this was considered anti-nationalistic, it was positive for the workers because nowadays it is more difficult to find a worker that has been beaten and the type of punishment that I spoke of earlier is not seen anymore. I would rather like to present a case like this here at National Congress and see things change. I think we still have not understood that coming to invest in this country gives no one the right to smash our dignity.

There have been strong national and international pressures to promote the Codes of Conduct. In '93 or '94 when the GAP Code started here in Honduras, some lay-offs were declared illegal and a national and international discussion started about the need for these codes to be circulated and for people to know about them. On the other side, human rights and women's organizations were trying to find options in order to verify the conditions of respect for human rights in the factories. The monitoring experience of Kimi in Honduras was conducted by human rights organizations, the Collective of Women (CODEMUH) and the Jesuits. It resulted in an agreement that in my opinion promoted the organization of a union and collective bargaining. This in no way substitutes national legislation, on the contrary; the Honduran monitoring process has a lot of respect for the work that has to be done for our laws to prevail. Since the 70's we have lived a terrible deterioration of the Ministry of Labor. At present, it is ridiculous to still find the same 18 to 20 labor inspectors for the northern region handling an explosion of 100,000 workers in this industry and using the same procedures. And then there is the issue of the special treatment *maquila* factories receives because they are considered social benefit enterprises which it is in our opinion unconstitutional. Moreover, the Social Security System does not respond to the needs of the worker. I believe that civil society can make the Ministry of Labor and national legislation to function properly, the same way it changed things with the Army and other equally important issues.

At present there are many organizations, NGOs and people, including the *Maquila* Industry Association, interested in searching for dialogue mechanisms. But there must also be pressure and a very strong emphasis on sensitization to develop the knowledge that people already have. We can speak now of factories with a union, with labor contracts; tripartite commissions have been established and there is communication among NGOs that have worked since those difficult beginnings. Some cases have been solved but the worker's agenda has to be rescued yet. It is not only a matter of organizing a union but to make changes in their lives.

(Maritza Paredes, CODEMUH, San Pedro Sula, Honduras).

The history of attention to childhood in the country starts with very little protection to those in risk and to juveniles breaking the law. The National Social Welfare Board acted until the 60's as a charity institution. In 1969 a Statute for Minors Jurisdiction is enacted. The irregular situation approach was a nebulous concept without legal definition and very dependent on the judge's opinion. Children being sent to orientation centers persists until practically the 90's.

The next step is the issuing of the National Constitution of '81 which incorporates for the first time a chapter dedicated to children's rights and which reproduces almost literally the declaration of children's rights of 1959, made up mostly of rights to protection and social welfare. Another important step was Article 112 of the Constitution, which establishes that children can't remain in jail with adults. Even though this was not put into practice, this constitutes a progress because the Convention does not forbid it specifically. But the most important step was the ratification of the UN Convention of the Rights of the Child, which took place within the framework of the process of State modernization that also resulted in the creation of the Human Rights Commissioner.

The reforms at all levels resulted in the transformation of the National Social Welfare Board more in agreement with the public sector privatization model and the proposal of the Children and Adolescents Code, a participatory product, without precedent in the country.

Initially, the Social Cabinet had a very important role, which was followed by that of the Commissioner on Human Rights, on facilitating the consultation process with civil society and in making the comparative analysis of national laws regarding childhood with those of other countries. But this first version was incomplete and in 1994 Save the Children, SCF-UK, the Coalition of NGOs in Favor of Children (COIPRODEN) and the Commissioner influenced the policy definition and a national commission representative of the government sector, NGOs and children was established.

However, at some point NGO pressure lowered before the approval and during the lobbying at Congress, so many achievements that had been introduced were eliminated. It is the only code in the region that doesn't have a collective organism where the policies regarding childhood are defined, leaving this to the State through the new Honduran Institute of the Family. This organism lacks the resources to implement its programs and therefore there is no coincidence between social discourse and what is necessary to put it into effect.

The first fight was won partially because the code included rights in an ample manner. However, participation is one of the less developed rights in the code and even though sexual abuse is almost absent, child abuse is contemplated in all its forms. Since the Code was approved, the Juvenile Justice System has extended from 2 to 13 courts of law nationally. Also, the figure of the Municipal Children's Defenders makes access to attention more democratic. A Special Attorney for Children's Rights is created and this behaved according to the principles of the Code. Due to the lack of resources, International Cooperation, particularly UNICEF, has supported the municipalization process. Some state offices, and the Honduran Association of Municipalities (AHMON) and COIPRODEN made influencing and monitoring efforts for the fulfillment of the Convention and have also been involved in policy definition. SCF-UK and Redd Barna, Norway, have also provided support to those still timid efforts. Children are also participating in the Movement of Working Children and it is being sought to rescue the positive aspects of the autonomous organization of juvenile gangs. Perhaps the only space that NGOs can consider their own is the promotion of child protagonism.

In comparison to other countries in the region, Honduras has been the country where the attempts by conservative sectors to set back the legislation have had much less success. This might be due to the country's sensitivity to international pressure. Moreover, it can be stated that children's rights have earned a place of respect nationally because its institutionalization is providing an answer to denouncements now higher in number. Also success has taken place at the health level. However, in public conscience there exists the distorted vision that the children's rights movement promotes the impunity of those infractions of the law committed by children.

For me the biggest challenge is for children to achieve protagonism in the defense of their own rights. The progress of the country is promising as long as NGOs increase their lobbying capacity. Their presence seeking to influence in the process of the country's reconstruction indicates that childhood will have a place in the next decades as long as the country remains at the same rhythm politically.

(Tomas Andino, Save the Children, UK, Central American Regional Office).



Before the '90s, domestic violence was a private matter. In order to change this, seven organizations worked hard and achieved the ratification of the Belem do Pará Convention. Upon returning from Beijing, the same organizations decided to organize a campaign in the framework of November 25th. We said: "With violence nobody is happy, neither who gives it, nor who receives it or whoever sees it". With the media products in hand, we called ourselves the Coalition against Violence. We went to businessmen and asked them: "How many minutes a day would you give to stop violence against women in Honduras? If the answer was 1 minute, we told them: well, 10 minutes are equivalent to 20 ads for our campaign".

In 1996 the Center for Women's Rights (CDM) proposed to organize not only an awareness but also a political incidence campaign. Through contact with the Latin-American Committee for the Defense of Women's Rights, we monitored the promotion of laws of this type in the region and parallel to that, we surveyed the Coalition's participant organizations. Women in Honduras wanted violence to end but not their homes. They didn't want a law that put their husbands in jail but educational measures and policy promotion that eliminated violence of the cultural imagery of people, as the easy way out of problems.

At this point, we had the possibility for an IDB Consultant to formulate the law but this meant to leave our efforts behind. CDM Coordinator, Gilda Rivera wisely advised us to move forward with our own resources. CDM made the first draft that we shared with the Coalition. They in turn shared it with their own organizations and during '96 we organized workshops and opened to the suggestions and opinions of other women. Once this agreement was reached, Congresswoman Victoria Contreras presented the law initiative. This was not a punitive law, nor was it incorporated to the Penal Code, it was a Special Law against Violence.

In our inexperience we assumed the Congressional Committee was going to push the initiative, but since it wasn't working properly, we made a whole incidence and lobbying strategy to obtain its approval. In early '97 we had more allies -the Human Rights Commissioner, the Church and many other sectors. More than 20,000 open letters to Congressmen were signed. People asked us for letters to take to their group, their community, their school, and they were returned. A group of children from one of these schools presented a letter to Carlos Flores, then President of Congress. We took advantage of the political juncture. Our Negotiating Commission had a clear idea of which issues were irrevocable and which negotiable and we demanded to become part of the Congressional Committee's meetings.

What was not negotiable was that violence against women was a public issue. That is, that the authorities applied the security measures and that the man, not the woman and children, left the house. This was applicable in cases of physical, sexual or psychological violence. But the hardest to negotiate were the issues related to property and food pension. These were guaranteed for the family in the period when the man left the house remaining restrained from approaching the place of work and study or the house during the trial period.

With the approval of the law more women denounced. With the law, women in Honduras feel a little bit more protected, because in many ways the State assumes responsibility and protects the victims.

However, its application particularly in the rural areas is still very weak. Our efforts need to become more systematic and part of a strategic plan. Our challenge is for the authorities to know and apply a law that crosses the values, ideas and the conception of the world of those in charge of enforcing it. Moreover, there have to be resources and clear mechanisms and policies that are institutionalized because even though there is still the good will and many personal commitments, a true political will from the government, from the Women's Institute is still non-existent.

We can see that the issue of violence has a lot of receptivity, we made many alliances but we still need to develop the organizational experience and the grassroots membership which allow us to influence in quantity and forward our proposals in other areas such as women's sexual and reproductive rights and their political participation, among others.

**(Regina Fonseca, Colectivo contra la Violencia. Tegucigalpa, Honduras).**

